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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/884,862

06/19/2001

Robert G. Hauser

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3688

21186

7590

09/28/2004

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EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/884,862

Applicant(s)

HAUSER ET AL.

Examiner

Scott M. Getzow

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 32-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 32-34,36-43,45,50,51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cansell (4825871) in view of Wittkamp et al (4549548).

Cansell shows electrodes 3,5, and 10 that are all connected to a discharge circuit that can switch the combination of electrodes used for sensing and stimulation.

As taught in col. 6, lines 59+, the electrode 10 can be a mesh of metal wires.

Further, col. 7, lines 45+ states that the electrode 10 can be the housing that encloses the circuitry of the defibrillator, which is common in the art. Still further, the spiral element 4 can be used as another electrode. The patent to Wittkamp shows an electrode 43 which can consist of part of the can of the device. The patent also teaches the use of a programmable switch which is used to change the electrode configuration. It would have been obvious to have programmable capability for the switch of Cansell since such would serve to allow the physician to optimize treatment for the patient, as taught in col. 2, lines 33+ of Wittkamp.

3. Claims 44,46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cansell.

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To connect the second electrode and the conductive housing in common is considered to have been obvious since such would prevent the housing from floating to a different potential which could be dangerous for the patient and destructive to the defibrillator.

4. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cansell and Wittkamp and further in view of Greatbatch (4157720).

Greatbatch shows the use of a helical coil electrode. The phrase 'for encircling the pulse generator housing' is considered to be intended use, not a structural limitation. Such helical electrodes are common in the art, providing an alternative stimulation electrode for increased variety of stimulation patterns.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Both Barreras et al (4558702) and Silvian (4991583) show, among other things, programmable switches.


Because new art has been applied, this rejection is not made final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (703) 308-2997. The examiner can normally be reached on M-F, 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Scott M. Getzow  
Primary Examiner  
Art Unit 3762

smg